HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. V.SEETHAPATHY

Writ Appeal Nos. 1208 and 1345 of 2005

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Writ Appeal No.1208 of 2005

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Between:

Ch.Mohan Rao

……Appellant

And

The Management of Glaxo India Limited,
30, Velachari Road, Guindy, Madras 600 032
now known as GSK Pharmaceuticals Ltd.,
Annie Besant Road, Mumbai 400 030
and another

……Respondents

Counsel for Appellant : Sri G.Vidyasagar

Counsel for Respondent No.1 : Smt. Uma Devi

Writ Appeal No.1345 of 2005

Between:

The Management of Glaxo India Limited,
Chennai represented by its Divisional
Manager

……Appellant

And

Ch.Mohan Rao and another

……Respondents

Counsel for Appellant : Smt. Uma Devi

Counsel for Respondent No.1 : Sri G.Vidyasagar

August 31, 2006

Per G.S. SINGHVI, CJ

These cross appeals by the workman Ch.Mohan Rao and the Management of Glaxo India Limited are directed against order dated 10-03-2005 passed by the learned Single Judge in Writ Petition No.13813 of 1995, whereby he confirmed the findings recorded by the Presiding Officer, Labour Court, Guntur that the workman was guilty of misconduct, but converted the penalty of dismissal from service into that of compulsory retirement.

While the workman has assailed the order of the learned Single Judge by contending that the findings recorded in the domestic enquiry held against him by the management, which were confirmed by the Labour Court are not based on legally admissible evidence and the learned Single Judge gravely erred by approving the award which was subject matter of challenge in the writ petition, the management has questioned the exercise of power by the learned Single Judge under Section 11-A of the Industrial Disputes Act, 1947 (for short, 'the 1947 Act').

For deciding whether the order under challenge suffers from any patent legal infirmity and calls for interference under Clause 15 of the Letters Patent, it will be useful to briefly notice the facts.

The workman joined service of the employer as a Clerk sometime in 1965. In March 1987, he applied for leave which was duly sanctioned. The initial tenure of his leave was from 13-04-1987 to 22-04-1987. While on leave, he applied for extension, which was also granted. At that stage, he did not disclose to the

management of the company that he had availed leave for taking up employment with M/s. Jindal Aluminium Limited as Marketing Manager in Sprinkler Irrigation Division. On coming to know of this adventure of the workman, the management asked him to join duty. He complied with the dictate of the management apparently with a view to avoid adverse consequences of having taken employment while on leave. Unfortunately for him, the management of the company did not take a benevolent view of the misconduct committed by him and instituted an enquiry vide charge sheet dated 29-11-1998. Two charges levelled against the workman were that he had unauthorisedly taken employment with M/s. Jindal Aluminium Limited and that he had dishonestly drawn medical reimbursement. In order to prove charge No.1, the management examined Sri I.V.V.Pai, Branch Distribution Manager and also produced Exs.M-18 to M-23 which included certified copy of application dated 09-02-1987 made by the workman to M/s. Jindal Aluminium Limited, certified copy of call letter dated 07-04-1987, certified copy of letter dated 19-05-1987 written by the workman to one of the customers of M/s.Jindal Aluminium Limited and certified copy of the letter of resignation dated 19-05-1987. In order to prove the charge of dishonest drawal of medical reimbursement, the management produced documents to show that he had submitted false medical bills. The Enquiry Officer accepted the evidence produced on behalf of the management of the company and returned the finding of guilty against the workman. On a consideration of the enquiry report, the management of the company dismissed the workman from service.

Feeling aggrieved by the action of the management, the workman filed an application under Section 2-A(2) of the 1947 Act which was registered as I.D No.441 of 1989. By an order dated 14-10-1991, the learned Presiding Officer of the Labour Court ruled

that the enquiry held against the workman was not fair. That order was challenged by the management in Writ Petition No.16756 of 1991. By an order dated 28-02-1992, a learned Single Judge quashed the order of the Labour Court. The workman challenged the order of the learned Single Judge in Writ Appeal No.344 of 1992. During the pendency of the appeal, the Division Bench directed that the Labour Court may proceed with the matter. Accordingly, the Labor Court examined the case on merits and passed award dated 29-12-1994, whereby the application of the workman was dismissed. As a sequel to final adjudication of the industrial dispute raised by the workman, the Division Bench disposed of the writ appeal as infructuous on 06-02-1997.

In the writ petition filed by the workman, the learned Single Judge though not required to undertake an exercise for re-evaluation of the evidence, did go into the merits of the findings recorded by the learned Presiding Officer and came to the conclusion that the same were based on correct appreciation of evidence. The learned Single Judge further held that both the charges levelled against the workman were rightly treated as proved by the Labour Court. He then adverted to Section 11-A of the 1947 Act and opined that the punishment of dismissal from service imposed on the workman is disproportionate to the misconduct found proved against him. He accordingly modified the punishment of dismissal and substituted the same with that of compulsory retirement.

Sri G.Vidyasagar, learned counsel for the workman assailed the findings recorded by the Enquiry Officer, the Presiding Officer of Labour Court, Guntur and the learned Single Judge on the merits of the charges levelled against the workman and argued that even though the same can be treated as findings of fact, in exercise of the

power of judicial review, this Court should interfere with the same because no tangible and legally admissible evidence was produced by the management before the Enquiry Officer. Learned counsel emphasised that production of certified copies of the application made by the workman for seeking employment in M/s.Jindal Aluminium Limited, call letter issued by M/s. Jindal Aluminium Limited and the letter of resignation were not sufficient for holding that he had taken up employment during the currency of leave. Sri Vidyasagar submitted that the management was duty bound to examine the competent officer of M/s.Jindal Aluminium Limited to bring home the charge that the workman had taken up employment while he was on leave.

We have considered the submissions of the learned counsel, but have not felt impressed. It needs no reiteration that the Indian Evidence Act or general law of evidence is not applicable to the proceedings under the 1947 Act. Rather, the adjudicating authorities constituted under the 1947 Act are statutorily authorized to adopt a procedure consistent with the rules of natural justice. For the sake of reference only, we may advert to the judgment of the Supreme Court in **Central Bank of India vs. P.C.Jain**[1].

Notwithstanding the above stated legal position, we do not find any merit in the argument of Shri G.Vidyasagar. The certified copies of the documents produced during the domestic enquiry constituted legally admissible piece of evidence which could be relied by the employer for bringing home the charge against the workman that he had taken up employment while on leave. It is neither the pleaded case of the workman that he adduced any evidence either before the Enquiry Officer or before the Labour Court that the copies of documents produced during the domestic enquiry were not genuine. Not only this, he did not make any attempt to approach the management of M/s. Jindal Aluminium Limited and obtained a

certificate casting doubt on the authenticity of the certified copies produced by the management of the company. In this view of the matter, we do not find any valid reason or justification to interfere with the view expressed by the Presiding Officer of the Labour Court that the charge of having taken up employment during the leave period stands established against the workman.

We also agree with the Labour Court that the Enquiry Officer had rightly found the workman guilty of taking medical reimbursement by producing false bills and, was therefore, guilty of dishonesty.

Before proceeding further, we consider it imperative to remind ourselves of the limited scope of the power of judicial review vested in the High Court under Article 226 of the Constitution. A writ of certiorari can be issued, if an order passed by the court subordinate to the High Court or a judicial or quasi judicial authority is found to be vitiated due to violation of the rules of natural justice or on account of lack of jurisdiction. The High Court can interfere with the finding of fact only if it is shown that such finding is based on no evidence or is entirely based on legally inadmissible evidence. However, the High Court cannot examine the sufficiency or adequacy of the evidence produced before the subordinate court or quasi judicial or judicial tribunal; re-appreciate or re-evaluate evidence and upset the finding of fact merely because it is possible to form a different opinion. The High Court cannot delve deep into the appreciation of evidence undertaken by the subordinate court or judicial or quasi judicial authority. These parameters for exercise of the High Court's power of judicial review are clearly discernible from the judgments of the Supreme Court in **Syed Yakoob v. K.S.Radhakrishnan**[2] and **Surya Dev Rai v. Ram Chander Rai**[3].

The next argument of Sri Vidyasagar is that even though the finding recorded by the Enquiry Officer that the workman had taken up employment with M/s. Jindal Aluminium Limited while he was on leave is held as correct, the same cannot be treated as an act of misconduct. We have mentioned this argument of the learned counsel only to reject the same because by virtue of Section 60-A of the Andhra Pradesh Shops and Establishments Act, 1966, a bar is imposed on the employee to take up the work on the day when employee is given holiday or is on leave in accordance with the provisions of the Act.

De hors the aforementioned statutory provision, we are of the considered view that when an employee goes on sanctioned leave, the master and servant relationship subsists and it would amount to gravest misconduct if an employee does any act which tantamounts to direct or indirect breach of contract of service. Taking up of employment with another employer during the currency of leave is certainly an act which falls within the parameters of grave misconduct.

We are further of the view that even if there is some doubt on the tenability of the finding recorded by the Labour Court in respect of charge No.1, charge No.2 viz., dishonest withdrawal of medical reimbursement by itself is more than sufficient for imposing one of the severest penalties on the workman because it is settled that a workman who commits fiscal misconduct has no right to remain in service, howsoever small the amount involved in the misconduct may be. In the present case, the workman has been found guilty of dishonest withdrawal of medical reimbursement and he has not been able to show that the said finding suffers from any infirmity.

The last question which needs consideration is whether the learned Single Judge was justified in exercising the extended

jurisdiction of this Court under Section 11-A of the 1947 Act. We would preface consideration of this issue with an observation that the primary jurisdiction to exercise the power under Section 11-A of the Act vests with the adjudicatory bodies constituted under the 1947 Act and not with the High Court. In rarest of rare cases, the High Court can interfere with the discretion exercised by the adjudicating forum by applying the doctrine of proportionality. However, if the adjudicatory body like the Labour Court has, on a consideration of the relevant factors taken a particular view of the misconduct committed by the workman and declined interference with the discretion exercised by the employer, the High Court will not substitute its opinion with that of the Labour Court etc. For this proposition, we may refer to a converse case in **Jitendra Singh Rathor vs. Shir Baidyanath Ayurved Bhawan Limited**[4].

In the present case, we find that the learned Presiding Officer had taken note of the nature of misconduct found proved against the workman and concluded that the punishment imposed by the employer was commensurate with the misconduct proved. The learned Single Judge did make a mention of the disproportionate character of the punishment imposed by the employer but without recording a specific finding that the same was shockingly disproportionate, he modified the order of punishment. In our considered view, the doctrine of proportionality cannot be invoked by the Court to tamper with the employer's domain to impose appropriate punishment on an employee found guilty of grave misconduct. In such a case, the punishment imposed on workman cannot be treated as shockingly disproportionate or wholly arbitrary or unreasonable.

On the basis of the above discussion, Writ Appeal No.1208 of 2005 is dismissed and Writ Appeal No.1345 of 2005 is allowed.

Consequently, the direction given by the learned Single Judge substituting the penalty of dismissal with that of compulsory retirement shall stand set aside and the writ petition filed by the workman shall stand dismissed. This would necessarily have the result of restoration of award passed by the Presiding Officer of the Labour Court in I.D No.441 of 1989. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

As a sequel to dismissal of Writ Appeal No.1208 of 2005, WPMP No.1408 of 2006 filed by the workman for early hearing of the writ appeal is disposed of as infructuous.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY,J

31-08-2006
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[1] AIR 1967 SC 983
[2] AIR 1964 SC 477
[3] AIR 2003 SC 3044
[4] AIR 1984 SC 976